

**AGREEMENT
BETWEEN THE CITY OF INDIANAPOLIS
AND
SONITROL CORPORATION
FOR
ALARM MONITORING AND EQUIPMENT INSTALLATION, SERVICE AND REPAIR**

This Agreement (hereinafter referred to as "Agreement"), entered into by and between the **City of Indianapolis** (hereinafter referred to as "City"), and **Sonitrol Corporation** (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.01 The "Agreement", as referred to herein, shall mean this Agreement executed by City and Contractor, and shall include these Terms and Conditions, the Attachments described herein and attached hereto, and any written supplemental agreement or modification entered into between City and Contractor, in writing, after the date of this Agreement.
- 1.02 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.
- 1.03 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.
- 1.04 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.
- 1.05 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.
- 1.06 This Agreement shall be construed under and governed by the laws of the State of Indiana.

SECTION II. DUTIES OF CONTRACTOR

- 2.01 Contractor shall provide alarm monitoring and equipment installation, service and repair for various City and County departments and agencies. The scope of services to be provided by Contractor is set for in Attachment A. The master inventory lists for equipment currently installed is set forth in Attachment B.

- 2.01.1 As additional equipment is installed over the term of this Agreement at the request of the City, the Contractor shall send notice of installation in accordance with Section 5.12. A new installation shall be at the rates set forth in Attachment C. An amendment to this Agreement is not required each time new installation is made. However, Contractor shall maintain an accurate inventory list of all equipment and shall provide such list to the City upon reasonable notice.
- 2.01.2 The Contractor's Limited Performance Warranty is set forth in Attachment D. This Limited Performance Warranty shall be in effect at each of the locations where Contractor is performing services for the City.
- 2.03 Contractor's standard Client Agreement is attached hereto as Attachment D. All terms contained on the front side of the Client Agreement become part of this Agreement except to the extent that the terms contained on the front page of the Client Agreement conflict with any other terms of Agreement or impose a greater obligation on the City than the terms of this Agreement. In case of conflict or greater obligation, the terms of the Agreement control the relationship between the parties. It is agreed that those terms contained on the back side, except Section 12(A)(B)(C), of the Client Agreement do not apply and are of no effect.

SECTION III. TERM

- 3.01 This Agreement shall commence upon execution by all parties and shall continue for two (2) years unless earlier terminated in accordance with this Agreement.
- 3.02 This Agreement may be renewed beyond the expiration date for another like term or a lesser term, by agreement of both parties. Agreement for renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the agreement shall be as set forth herein, and may be amended only by written instrument signed by both City and Contractor and attached hereto as an amendment.

SECTION IV. COMPENSATION

- 4.01 The Contractor shall be paid for installation and monthly fees in the amounts set forth in Attachment C to this Agreement.
- 4.02 Contractor shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperate with and provide any other necessary information to City. City shall pay Contractor within thirty days after receipt of such properly itemized claim forms.

SECTION V. GENERAL PROVISIONS

- 5.01 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the Consolidated City of Indianapolis and of Marion County. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by the City for any loss of any kind

whatsoever. The Contractor has no authority, express or implied, to bind or obligate the City in any way.

- 5.02 Subcontracting. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.
- 5.03 Safety. Contractor shall be responsible for the safety of his employees at all times and shall provide all equipment necessary to insure their safety. Hard hats shall be worn as required by OSHA, IOSHA, and local building ordinances when employees are working on City and County Property.
- 5.03 Necessary Documentation. Contractor certifies that it will furnish the City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City of Indianapolis, the County of Marion, other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now in and will maintain its good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement. Failure of the Contractor to comply with this paragraph shall constitute a material breach of this Agreement.
- 5.04 Confidentiality of City Information.
- 5.04.1 Contractor understands that the information provided to it or obtained from City during the performance of its services is confidential and may not, without prior written consent of the City, be disclosed to a person not in the City's employ except to employees or agents of Contractor who have a need to know in order to provide the services. Further, Contractor's Work Product generated during the performance of this Agreement is confidential to City. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Contractor shall provide notice to the City prior to such disclosure; or (e) information that is independently developed by Contractor without references to the confidential information.

5.04.2 Contractor shall not, under any circumstances, release information provided to it by, or on behalf of, the City that is required to be kept confidential by City pursuant to Indiana law except as contemplated by this section, clause (d).

5.05 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by the City or any other authorized representative of the City of Indianapolis, Marion County, Indiana. Copies thereof, if requested, shall be furnished at no cost to the City.

5.06 Ownership of Documents and Materials.

5.06.1 All documents, including records, programs, data, film, tape, articles, memos, and other materials, created or developed under this Agreement, shall be considered "work for hire" and the Contractor transfers any ownership claim to the City of Indianapolis and all such matters will be the property of the City of Indianapolis. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the City, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss or damage to these materials developed for or supplied by the City and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Agreement shall be available to the City. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers in accordance with professional standards.

5.06.2 Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that Contractor shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by Contractor prior to, or acquired by Contractor during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work For Hire and Contractor shall not be restricted in anyway with respect thereto.

5.7 Insurance. Contractor shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and City from the claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

1) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;

2) Claims for damages because of bodily injury and personal injury, including death, and;

3) Claims for damages to property.

Contractor's insurance shall be not less than the amounts shown below:

A.	Worker's Compensation & Disability	Statutory
B.	Employer's Liability Bodily Injury Accident	\$ 100,000 each accident
	Bodily Injury by Disease	\$ 500,000 policy limit
	Bodily Injury by Disease	\$ 100,000 each employee
C.	Excess Auto Liability	\$1,000,000 (single limit) (owned, hired & non-owned)
	Bodily injury & property damage	\$1,000,000 each accident
D.	Umbrella Excess Liability	\$1,000,000 Each occurrence and aggregate

5.07.2 With the prior approval of City, Contractor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. Contractor shall be responsible for all deductibles.

5.07.3 Notwithstanding any other provision of this Agreement, Contractor shall provide all insurance coverage required by the documents provided by City.

5.08 Termination for Cause or Convenience.

5.08.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of City's intent to terminate, and (2) an opportunity for consultation with City prior to termination. In determining the amount of final

payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.

5.08.2 This Agreement may be terminated in whole or in part in writing by City for City's convenience; provided that Contractor is given (1) not less than ten (10) calendar days written notice (delivered certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with City prior to termination. If termination for convenience is effected by City, Contractor's compensation shall be equitably adjusted.

5.08.3 Upon receipt of a termination action for default or for the City's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

5.08.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Paragraph 5.08.2 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

5.09 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including, but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.10 Indemnification. Contractor agrees to indemnify, defend, and hold harmless the City of Indianapolis and its officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission by Contractor or any of its officers, agents, employees or subcontractors, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. The City shall not provide such indemnification to the Contractor, provided, however, that the Contractor shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omission of the City.

5.11 Key Persons. It is hereby agreed by the parties hereto that the work described in this Agreement to be performed by Contractor is of a personal services, highly professional in nature, and that the identity of the individual who is to be personally responsible for such work is of prime importance to City. The parties therefore agree that in the event of the death or disability of Contractor, or, if Contractor's signatory to this Agreement is a firm, partnership, or corporation, in the event of the termination of employment of anyone understood to be personally responsible for the work described in this Agreement, the City may, without penalty and in its discretion, terminate this Agreement, and make its own new Agreement with any other party for completion of the work herein described.

5.12 Notice. Any notice, invoice, order or other correspondence required to be sent under this Agreement shall be sent to:

To Contractor:

Michael McCalip
219 E. St. Joseph St.
Indianapolis, IN 46202

To City:

Carol Metz, Administrator
City of Indianapolis Purchasing Division
STE 1522, 200 E. Washington St.
Indianapolis, IN 46204

5.13 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should the Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by the City or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the City for such costs. The City may withhold payments on disputed items pending resolution of the dispute.

5.14 Non-discrimination. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

5.15 Conflict of Interest. Contractor certifies and warrants to City that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.

5.16 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- 5.17 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 5.18 Applicable Laws; Forum. The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. This includes the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the City and the Contractor to determine whether the provisions of the Agreement require formal modification.

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion.

- 5.19 Waiver. The City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of the City's rights or remedies.
- 5.20 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.21 Attorneys' Fees. Contractor shall be liable to the City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.
- 5.22 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City.
- 5.23 Non-Exclusivity. This Agreement shall not limit City's rights to obtain like services from sources other than Contractor.
- 5.24 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for the Contractor represents that he/she has been duly

authorized to execute agreements on behalf of the Contractor designated above, has filed proof of such authority with City and has obtained all necessary or applicable approval from the home office of the Contractor to make this Agreement fully binding upon the Contractor when his/her signature is affixed and accepted by the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

City of Indianapolis

Sonitrol Corporation

Purchasing Division

By: Carol Metz
Carol Metz, Administrator

By: Kevin Estes

Printed: KEVIN ESTES

Date: 10/23/08

Title: PRESIDENT

Date: 10/20/08

Approved as to Form and Legality:

Approved for Execution: (☒)

Approved for the Availability of Funds: (☐)

By: April E. Schultheis
April E. Schultheis
Assistant Corporation Counsel

By: David P. Reynolds ①
David P. Reynolds
City Controller

BW 10/29/08
ccm

Date: 10-10-08

Date: 11-3-08

Approved for Execution:

Gregory A. Ballard, Mayor

By: Chris W. Cotterill
Chris W. Cotterill
Corporation Counsel

Date: 11/5/08

ATTACHMENT A
Scope of Services Between
City of Indianapolis and Sonitrol Corporation
Alarm Monitoring and Equipment Service/Repair

This Scope of Services between the City of Indianapolis and Sonitrol, a corporation with local headquarters at 219 E. St. Joseph St., Indianapolis, IN, shall include the following terms related to pricing and services performed:

1. In exchange for monthly “monitoring fees,” Sonitrol agrees to effectively monitor its various security, fire and card access systems as installed and utilized by City of Indianapolis departments. These fees shall be individual monthly payments made by each department, division or section and shall be based on the specific equipment in place and the services rendered at the particular facility. A current list of the equipment and services, and the associated monthly fee is attached for each existing facility.
2. In addition to monitoring services, and as a part of this agreement, Sonitrol warrants that the existing systems/equipment installed operate and function properly. For equipment that fails to perform adequately when used according to Sonitrol’s instructions, Sonitrol agrees to service, repair and/or replace equipment in a timely manner as may be required during the term of the agreement, and at no additional charge (parts or labor), subject to its attached standard service agreement. Such warranty will be for the life of the agreement.
3. Sonitrol will offer to the City of Indianapolis the full use of its website service (mysonitrol.com), which shall enable users to be notified of which alarms have not been activated at their facility for 3 or more days. The site will also provide a variety of reporting functions to City management. These reports will include such things as weekly or bi-weekly reports of individuals entering the facility after hours, etc. The site will also address a “contact list” for problem resolution. The site will also offer custom e-mails and Excel compatible worksheets. Web site services and access, including necessary training, will be provided to the City at no additional charge for the life of the agreement.
4. Sonitrol agrees to provide City departments with a sufficient number of spare “cards” to be kept on-hand at their respective facility. The locations and numbers of spare cards will be agreed upon by individual departments and Sonitrol.